

1986

Florence J. Gillmor, Stephen T. Gillmor and Charles F. Gillmor v. Edward Leslie Gillmor and Gillmor Livestock Corporation : Petition for Rehearing

Utah Court of Appeals

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UTAH
IN THE UTAH COURT OF APPEALS
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BRIEF

Florence J. Gillmor, Stephen A. 10)
T. Gillmor and Charles F. DOCKET NO. 860302-CA
Gillmor,

Plaintiffs and Respondents,)

vs.)

Edward Leslie Gillmor and)
Gillmor Livestock Corporation,)

Defendants and Appellants.)

(District Court No. C81-3875))

Gillmor Livestock Corporation,)
a Utah Corporation,)

Case No. 860302-CA

Plaintiff and Appellants,)

vs.)

Stephen T. Gillmor, Florence)
J. Gillmor and Charles F.)
Gillmor,)

Defendants and Respondents.)

(District Court No. C82-3490))

PETITION FOR REHEARING
AND SUPPORTING ARGUMENT.

Appeal from the Judgment of the Third District Court
In and For Salt Lake County
Honorable J. Dennis Frederick, Judge

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Re: Petition for Rehearing and Supporting Argument
Florence J. Gillmor, et al, Plaintiffs and
Respondents, vs Edward Leslie Gillmor, et al,
Defendants and Appellants, Case No. 860302-CA

Dear Sir:

Review of the above-cited petition reveals several clerical or typographical errors. In accordance with verbal instructions from your office, request that the following pen and ink changes be made :

a. On page 6, add to the last paragraph the following: "Rucker v. Dalton, supra.")

b. Insert after the word "brief," and before the word "which" on page 8, line 18, the following: "(Appendix E, this petition)"

c. Insert after the words "Exhibit D" and before the word "are" on page 10, line 6, the following: "(Appendix E, this petition)".

d. Strike the figure "1432" on page 10, line 8, and insert the following: "1307".

e. Strike the figure "1809" on page 10, line 9, and insert the following: "1684".

f. Strike the word "only" between the word "and" and the figure "1684" on page 10, line 22.

g. Insert after the word "had" and before the word "lambs" on page 10, line 22, the following: "1890".

Your consideration in this matter is appreciated.

Respectfully,


E. J. SKEEN

EJS:lc

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IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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Florence J. Gillmor, Stephen)
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Plaintiff and Appellants,)

vs.)

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J. Gillmor and Charles F.)
Gillmor,)

Defendants and Respondents.)

(District Court No. C82-3490))

PETITION FOR REHEARING
AND SUPPORTING ARGUMENT.

THE APPELLANTS, in the consolidated cases above named,
petition for a rehearing pursuant to Rule 35 of the Rules of the
Utah Court of Appeals, for the reason that they claim that this
Court, in the majority opinion, overlooked or misapprehended
points of law and fact as follows:

1. This Court ignored the fact that the trial court decided the case without giving the Appellants' counsel an opportunity to read and answer the trial brief.

2. This Court overlooked errors and deficiencies in the findings of fact which require reversal.

(a) In Consolidated Case, Florence Gillmor et al, v. Edward Leslie Gillmor, No. C81-3875, findings Nos. 7 and 8 are not supported by any competent evidence.

(b) In the case of Gillmor Livestock Corporation v. Stephen T. Gillmor, et al, No. C82-3490, there are no findings of fact on any issue.

3. This Court, in the majority opinion, committed gross error by sustaining general findings of damages for trespass based, not on proof of the number of trespassing livestock and the duration of the trespass, but solely upon inferences from assumed facts and other inferences.

4. The majority opinion of this Court, sustaining a general finding of damages for decrease of Stephen's lamb production in the Spring of 1981 in the amount of \$23,340.00, is not based on competent evidence, but on pure speculation and conjecture.

5. This Court entirely overlooked or misapprehended the significance of a firm ruling of the trial court, during the trial, that the ownership of the Swaner lease was not an issue in this case.

6. This Court completely ignored the Order of the Supreme Court of Utah, dated August 6, 1982, denying the respondents' motion to change the loss of lamb production from 352 lambs, as set out in finding of fact No. 8, to 502 lambs.

The undersigned hereby certify that this petition for rehearing is made in good faith and not for purposes of delay.

PRELIMINARY STATEMENT

Before considering specifically points relied on herein, counsel observes they have no quarrel with the law cited by the majority opinion under "II. STANDARD OF REVIEW". It is pure "horn book" law that there is a presumption that the "findings of the trial court are correct" and that the court views the evidence, etc., in a light most supportive of the trial court's findings, etc. These source cases go further, however, and hold that the above is true only when the findings are supported by substantial evidence in the record. (Hal Taylor Assoc. v. Union America, Inc., 657 P 2d 743, 7.) (See majority opinion cases.)

ARGUMENT

1.

THIS COURT IGNORED THE FACT THAT APPELLANTS WERE GIVEN NO OPPORTUNITY TO READ AND ANSWER THE PLAINTIFFS' TRIAL BRIEF

The taking of evidence in the consolidated cases was concluded on October 13, 1983, and the trial court directed the parties, through their respective counsel, to make oral arguments on October 20, 1983. At the appointed time, counsel for the respondents had displayed in the court room, for the first time,

large charts prepared from a document entitled "Plaintiffs' Trial Brief", a copy of which was for the first time delivered to counsel for the appellants in the Court room after the argument.

Mr. Ashton, Attorney for Appellants, stated that he had not had an opportunity to read the brief, and requested an opportunity to read and answer it. We quote from the record:

"The Court: I will have to take this matter under advisement, Gentlemen. I will grant that request, Mr. Ashton. It was my view that I would probably be prepared to render a decision within approximately one week. How long do you think it will take to get your responsive brief?

"Mr. Ashton: In less than a week.

"The Court: Very well. Get it to me as soon as possible." (R. 1296, 1297)

The trial court dated and filed, on the next day, its Memorandum Decision based almost entirely on the plaintiffs' trial brief, which appellants had no opportunity to answer. In the majority opinion, this Court states that the trial court adopted Stephen's calculation in the trial brief and that the factors itemized therein became the court's findings.

Although the appellants covered this matter in their brief filed in the Supreme Court, (page 29) this Court has not mentioned in its opinion that the appellants' had no opportunity to answer. We believe that both the trial court and the appellate court have a duty to treat litigants fairly. We strongly urge that the record shows that the case was decided after a consideration of only one side of the controversy over damages. The trial court, after granting time to answer the brief, repudiated its promise to consider both sides and this appellate court has ignored the obvious mistreatment of appellants.

2.

DEFECTIVE FINDINGS OF FACT

Although the findings of fact refer to "consolidated cases: C81-3875 and C82-3490", in the heading and in the preamble they address only the issues in Case No. C81-3875. The identifications of the parties are Stephen Gillmor and the "defendants", who could mean only the defendants in Case No. 81-3875 because Stephen is the first named defendant in Case No. C82-3490. The language of the findings simply does not make sense unless "defendants" means Edward L. Gillmor and Gillmor Livestock Corporation.

Consolidated Case No. C82-3490 is a declaratory judgment action regarding the ownership of a lease of land in Salt Lake County, and even a casual reading of the findings of fact will confirm that not one of the thirteen (13) findings makes any reference to the lease.

Rule 52(a) of the Utah Rules of Civil Procedure provides in part:

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A;"

After quoting the pertinent part of the rule, this Court in Romrell v. Zions First Nat. Bank, N.A., Utah, 611 P.2d 392, without equivocation, well stated the law. We quote:

"This requirement is mandatory and may not be waived. In re Murphy's Estate, 269 Minn. 393, 131 N.W.2d 220 (1964); 9 Wright & Miller, Federal Practice and Procedure; Civil §§ 2335, 2574 (1971). Failure of the trial court to make findings on all material issues is reversible error. Rucker v. Dalton, Utah, 598 P.2d 1336 (1979).

In the consolidated case No. C82-3490, issues are raised as to whether Stephen has and had an interest in the Gillmor Livestock corporation's written lease of a large acreage of land near the Salt Lake Airport. See the Complaint (C82-3490, pp 1-3) and Answer (C82-3490, pp. 26-29).

Although the two church leases were introduced in evidence, Exhibits P-8 and P-9, and there was much testimony as to the use of the church leased land for grazing, the trial court made no finding of fact on the issue and made no mention of the lease in the judgment.

This Court misapprehended or deliberately disregarded the mandatory nature of the above quoted rule and the Utah cases, as written, construing it.

We quote Findings of Fact Numbers 7 and 8:

"7. Stephen Gillmor was damaged in 1981 by defendants' sheep grazing on lands in his possession in the amount of \$8,100, and by defendants' cattle grazing on lands in his possession in the amount of \$17,504.04."

"8. As a result of defendants' utilization of lands rightfully in the possession of Stephen Gillmor, Stephen Gillmor suffered a decrease in his lamb production in the Spring of 1981 in the amount of 352 head of lambs with a value of \$23,340.00."

These findings of fact are defective, not only because the findings on damages are not supported by evidence as to the number of livestock in trespass, which will be argued under another heading, but because they are not sufficiently detailed and do not include enough subsidiary facts to disclose how the Court reached the conclusion regarding damages.

3.

GROSS MISAPPREHENSION OF THE LAW
AND FACTS REGARDING TRESPASS

The dissenting opinion of Judge Jackson, under the headings, "I. Respondents' Burden at Trial", so well states the law of this state that it will not be repeated here. After pointing out that the majority opinion glosses over the paucity of documented instances of trespass, Judge Jackson states:

"Although my colleagues prefer to obscure these deficiencies, I instead turn to a detailed consideration of the evidence of trespass as actually produced at trial, not as conjured up by respondents' counsel." (Emphasis added)

Judge Jackson's detailed analysis evidenced by the tables on pages 13, 14, 16, and 17 of this court's opinion, are, for convenience, included as Appendix A.

Since cattle and sheep cannot be in two places at once, we add a table (Appendix B) showing the undisputed testimony of Edward and Luke Gillmor showing the details of numbers of livestock, period of grazing, and places of grazing. The references to the record are given to cover each detail.

This undisputed documented information was dis-regarded, and the visual aid information adopted by the trial court without any support except spot sighting, mostly from an airplane, was accepted by the trial court and this court without changing a dollar!

The trial court used the above information as to numbers of livestock in the visual aid presentation, but ignored the fact that a large part of the time the livestock were on land leased by Bud and on his private land which was not historically used by the Gillmors.

In the visual aid presentation, quoted in the majority opinion, only two leases were mentioned. This completely disregards the many leases listed in Appendix C.

4.

NO PROOF OF THE CAUSE FOR THE
DECREASE OF LAMB PRODUCTION

Finding of Fact No. 8 provides:

"As a result of defendant's utilization of lands rightfully in the possession of Stephen Gillmor, Stephen Gillmor suffered a decrease in his lamb production in the spring of 1981 in the amount of 352 head of lambs of a value of \$23,340." (R. 506)

It will be noted that this Finding specifically states that 352 head of lambs of a value of \$23,400 were not produced because of defendant's utilization of land rightfully in the possession of Stephen Gillmor. This finding is based on "Exhibit D" attached to the trial brief, which states: "352 lambs X \$45 = \$15,840." Exhibit D is based on Stephen Gillmor's testimony. He testified that he intended to lamb 980 ewes that were in Rush Valley on the Swaner property (cross hatched yellow on the map, Exhibit P-1), but could not do it because the land was completely occupied by cattle, dry sheep, and horses belonging to Bud. He said:

"A. I had no choice. I took them to the Park City area referred to earlier in the testimony as the quarry property, turned them loose on the quarry property, and that's where they lambed." (R. 766-768)

He testified further:

"Q. Now, do you have figures for your Summit County ewes?

"Yes, I do.

"Q. Can you tell us what they were?

"A. I got 979 ewes, 725 lambs.

"Q. And your production?

"A. 74 percent." (R. 769)

In order to get 352 lambs decrease caused by lambing in Summit County, Stephen compared the lamb production indicated above with that of another herd of sheep which were lambed in Salt Lake County. There is no evidence that all of the ewes he moved to Summit County were with lamb as compared to the Salt Lake County ewes, that the weather in Summit County had an adverse effect, that the Summit County herd was properly attended during lambing, or that other land in Salt Lake County could or could not have been leased, or that the lamb production was decreased for any other reason. In short, the proof was entirely lacking to show that if the same herd of 979 ewes had been lambed on the Swaner land, there would have been more than 725 lambs. The evidence offered is entirely speculative and will not support the general finding of damage.

The term "production" is used in the trial brief and Exhibit D, however, production is computed differently for Salt Lake County than it is for Park City, because the ewe counts in Salt Lake County are based on a count of ewes at docking whereas the count of Park City ewes includes all ewes in the Park City area whether or not the ewe had lambs. The significance of this

is that docking occurs approximately one month after lambing, so that ewes counted at docking would be limited to ewes who had a lamb or lambs at the time of docking, and production would necessarily have to be at least 100%. Ewes that didn't give birth or that lost their lambs before docking would not be counted. Thus, the ewes counted in Salt Lake County for Exhibit D are all ewes that had lambs at docking.

Exhibit D reflects 377 ewes unmixed and 1432 ewes mixed, or a total of 1809 ewes. The testimony of plaintiff indicates there were a total of 2300 ewes in Salt Lake County. (R. 764) The Park City count of 979 ewes includes all ewes at Park City. (R. 767 and 769) The computations on Exhibit D determine a production rate for Salt Lake County based upon an average of the mixed ewes (R. 784) at 110% $\frac{(1432)}{(1307)}$. This is based upon 100% of the ewes having lambs. The Park City calculation is then based on the 110% production in Salt Lake County (all ewes in the count having lambs), by multiplying the total number of Park City ewes (whether or not they had lambs) by 110%. This results in a lamb loss estimate greatly in excess of reality because there was no consideration given to ewes in Park City that did not have or would have lost the lambs. In Salt Lake County there was a total of 2300 ewes and only 1684 of these ewes had lambs at docking as reflected on Exhibit D. $(1432 + 458)$ (R. 43) Thus, in Salt Lake County the difference between total ewes and ewes at docking was 616 $(2300 - 1684)$ or 73% of the total ewes. In order to estimate lamb production at Park City, based upon Salt Lake County figures, the total ewes count at Park City would have to

be reduced by ewes with no lambs at docking time before applying the Salt Lake County production figures determined in Exhibit D. Such a calculation would change the lamb figures as follows:

Adjustment for non-producing ewes at Park City based on Salt Lake County figures:

$$979 \text{ Ewes} \times .73 = 717 \text{ ewes with lambs.}$$

Application of Salt Lake County Docking ewe production:

$$717 \times 1.10 = \underline{789} \text{ lambs.}$$

Calculation on Exhibit D:

$$979 \times 1.10 = \underline{1077}$$

Difference between Exhibit D calculation and calculation based upon comparison of docking counts at Salt Lake County and total ewes adjusted for docking counts based upon Salt Lake County experiences:

| | <u>EXHIBIT D</u> | <u>AS ADJUSTED</u> |
|--------------|-------------------|--------------------|
| Ewes | 979 X 1.10 = 1077 | 717 X 1.10 = 789 |
| Lambs docked | <u>725</u> | <u>725</u> |
| Damage | 352 | 64 |

The Judgment and Findings which adopted Exhibit D result in a damage award for Park City lambs of 352 based upon the assumption that every ewe would have had lambs. Using the method adopted, the lamb crop in Park City could not have been less than 100% of the total ewes. In Salt Lake County where the production percentage was determined, only 73% of the total ewes had lambs. An adjustment of 73% of the total ewes in Park City, consistent with the Salt Lake County experience, reduces the

damages from 352 lambs to 64. There was no testimony or other evidence presented to support the proposition that all ewes in Park City would have had lambs.

Attached to this brief are copies of R. 43, R. 763 to 769, and R. 783 to 786 which set forth the testimony relating to the above. (Appendix E and F)

There is no evidence that the weather in Summit County had an adverse effect, that the Summit County herd was properly attended or attended in a similar manner as in Salt Lake County during lambing, that lambing in May as opposed to April would have produced the same result, that the lamb production would be the same for newly purchased ewes as opposed to the established herd in Salt Lake County, or that other land in Salt Lake County could or could not have been leased, or that the lamb production was decreased for any other reason. In short, the proof was entirely lacking to show that if the same herd of 979 ewes had been lambed on the Swaner land, there would have been more than 725 lambs. The evidence offered is entirely speculative and will not support the general finding of damage.

5.

OWNERSHIP OF SWANER LEASE
NOT AN ISSUE IN THIS CASE.

One of the larger pieces of land involved in this case was described as the "Swaner property", referred to in the evidence as the "Swaner Lease". The trial court found that this lease was valid as to Stephen Gillmor and that the Edward Gillmor defendants had no rights to that property. This was clearly error.

During the cross-examination, one of the witnesses was asked:

"Q. Isn't there a lawsuit pending right now between your father (Stephen Gillmor) and Mr. (Edward) Gillmor as to who is entitled to that Swaner Lease that's pending in this Court?"

Mr. Lee then interrupted and said, "Your honor, if I might, so the court will be aware, there's no case pending. Now that's been stated....There's been no case filed on that particular Swaner property." (Emphasis added) Appellant's counsel had stated there was.

The Court: "We may determine that. At this point, however, I don't propose either of you intend to have me rule on the Swaner property. That's not an issue." (Emphasis added)

The next day Mr. Lee apologized to the court and admitted that overnight he had found that Mr. Ashton was right and that a 1981 case was pending. That case was entitled "Edward L. Gillmor vs. Robert B. Swaner, et al. (Stephen Gillmor), and claimed the lease to the Swaner property. The trial court, even though it had said this was not an issue to be tried, adopted Mr. Lee's eleventh hour brief and ruled that Stephen Gillmor was entitled to the Swaner property -- and that, because he could not use it, he had to lamb at Park City. *This kind of judicial determination of "now-you-see-it, now-you-don't", is frustrating.* The Court, by saying it was not an issue, later reversed itself without notice and without opportunity to introduce evidence -- indeed without the right to introduce evidence when a case was already pending. This matter was referred to in detail in Appellant's

brief, pages 24, 25, 26, and 27. We must thus conclude that the court's finding that Stephen was the rightful owner of the Swaner lease was clear error. Nor was it harmless error. It formed an important basis for Mr. Lee's eleventh hour alleged lamb loss in Park City - which the Court adopted in toto. Litigants are entitled to more careful treatment than was accorded Appellants on this issue which was, in fact, as the court said, not an issue at all.

6.

THIS COURT COMPLETELY IGNORED
A SUPREME COURT ORDER

After the Appellants' brief had been filed, the respondents filed a document in the office of the Supreme Court Clerk, dated July 23, 1984, entitled "Respondents' Motion to Correct Clerical Error", a copy of which is Appendix D. It will be noted that the respondent seeks to change the figures of 352 lambs decreased production to 502 lambs.

Paragraph 8 of the motion states that "In order to conform the Findings of Fact to the evidence, and in order to effectuate the intention of the lower court as demonstrated by its award of damages and its reliance on the statement of damages presented by plaintiffs, paragraph 8 of the Findings of Fact should be corrected to show 502 lambs, rather than 352 lambs." (Emphasis added)

A response to the motion was filed by the appellants, dated August 1, 1984, in which it is stated that any error of inserting in paragraph 8 of the findings the number "352" instead

of "502" was a judicial error and not a clerical error. The case of Richards v. Siddoway (Utah) 471 P.2d 143, is cited and quoted from as follows:

"The distinction between a judicial error and a clerical error does not depend upon who made it. Rather, it depends on whether it was made in rendering the judgment or in recording the judgment as rendered. 46 Am.Jur.2d Judgments § 202."

We quote from the Memorandum Decision of the trial Court:

"In addition, the Court believes that there was sufficient evidence to establish by a preponderance that Steven T. Gilmore (sic) was required by virtue of the trespasses referred to to transport a herd of sheep to Park City during the lambing season resulting in a significantly reduced lambing percentage, to-wit: 74%. The net effect of this reduction in lambing percentage supports the claim for lambs lost in the amount of 352 head, resulting in damages of \$23,340.00 (set forth in the visual aid submitted to the Court entitled Lamb Loss Based on Docking Counts and Plaintiffs' Trial Brief on the Issue of Damages)."

It is further pointed out that, if, as contended by the respondents, the trial court had intended to include 150 lambs allegedly lost in Salt Lake County, there is no support for the conclusion in the memorandum decision.

The motion to correct clerical error was set for hearing on August 6, 1984, and was argued orally on that date. The Supreme Court made and entered an order on that date as follows:

"Respondents' motion to correct clerical error, having been considered, it is hereby ordered that the same be, and hereby is, denied."

In this Court's majority opinion it is stated, regarding the matter of the number of lambs, that the trial court found that Stephen Gillmor suffered a decrease in his lamb production in the spring of 1981 of 352 head of a value of \$23,340. In a footnote, it is stated:

"3. Both parties point out to this Court the discrepancy between the finding and Stephen's calculated damages. We conclude the "352 head" in the finding should read "502 head". Such clerical error is insignificant to the issues on appeal."

The mistake, which the majority opinion characterizes as "insignificant" amounts to \$7,500.00 plus accrued interest.

This declaration that the mistake was a clerical error disregards the ruling of the Supreme court denying the motion to change the findings, the result of which would be to rewrite the trial court's memorandum decision to add 150 lambs which were not included in the herd of sheep transported to Park City, but as stated in the visual aid material, were the result of mixing sheep in Salt Lake County, a subject not mentioned in the trial court's memorandum decision.

CONCLUSION


The decision of the lower court was based entirely on a theory of damages proposed by the Respondent at the time of final argument; in fact, the Trial Court's decision follows the Respondent's exhibit on damages word for word even to repeating Appellants' erroneous calculation which appellant later tried unsuccessfully to correct. On the other hand, none of Respondents' evidence was

considered or followed even though it was often undenied.

We respectfully submit that a rehearing should be granted and the case reversed.

VAN COTT, BAGLEY, CORNWALL & McCARTHY


CLIFFORD L. ASHTON


E. J. SKEEN
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

Attorneys for Appellants

CERTIFICATE OF DELIVERY

I hereby certify that I caused four true and correct copies of the PETITION FOR REHEARING AND SUPPORTING ARGUMENT to be hand delivered this 12th day of November, 1987, to the following:


James B. Lee
John B. Wilson
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
Post Office Box 11898
Salt Lake City, Utah 84147

Attorneys for the Respondents
Stephen T. Gillmor and Florence
J. Gillmor

Mr. Charles F. Gillmor
Post Office Box 130
Oakley, Utah 84055

(Mail)

Respondent Pro Se



E. J. SKEEN

APPENDIX A

APPENDIX A

| MONTHS OF 1981-82 | DATES CATTLE COUNTED | NUMBER COUNTED | RESULT IN ANIMAL DAYS |
|---|----------------------------------|---|--|
| March | None | None | None |
| April | 3,6,7,9,24,27 | 100-150 pairs** | 150 x 25 = 3,750 |
| May | 15 | 100 pairs | 100 x 1 = 100 |
| June | 5 | None | None |
| July | 8 12 13 | 75 cows 47 cows 24 cows | 75 x 6 = 450 |
| August | 3 6 9 31 5 27 | 11 cows 11 cows 10 pairs 10 pairs 42 pairs 41 cows | 11 x 27 = 297 42 x 23 = 966 |
| September | None | None | None |
| October | None | None | None |
| November | 2, 3 | 204 pairs (loaded out) | None |
| December | 12 | 84 cows (on Swaner leaseland) | 84 x 1 = 84 |
| January | 14-22, 25-31 | 50 cows (mainly on Edward's property) | None |
| February | None | None | None |
| Total Animal Days | | | 5,647 |
| Total Cattle AUMS.....(5,647 divided by 30) | | | 188 |
| x \$7.96 per cattle AUM | | | \$1,496.48 |

** A pair is cow and her calf. For purposes of calculating forage consumed, only the cow is counted because the calf is supported primarily by its mother. Typically, a calf is counted separately once it turns six months old.

| MONTHS OF 1981 | DATES SHEEP OBSERVED | NUMBER COUNTED | RESULT IN ANIMAL DAYS |
|---|-------------------------|-------------------|----------------------------|
| March | 31 | 1,000 | $1,000 \times 1 = 1,000$ |
| April | 1 | 1,000 | |
| | 2 | 1,000 | |
| | 3 | 400 | |
| | 5 | 1,000 to 1,200 | |
| | 6 | 400; 75 | |
| | 7 | 400; 75 | |
| | 18 | 1,000 to 1,200 | |
| | 19 | 1,000 to 1,200 | $1,200 \times 20 = 24,000$ |
| | 24 | 300 to 350 | |
| | 26 | 300 to 350 | |
| | 27 | 300 to 350 | $350 \times 4 = 1,400$ |
| May | None | None | None |
| June | None | None | None |
| July | None | None | None |
| August | 21 | 1,300 | |
| | 22 | 1,300 | $1,300 \times 2 = 2,600$ |
| | 24 | 450 | $450 \times 1 = 450$ |
| September | None | None | None |
| October | 6 | 1,300 | $1,300 \times 1 = 1,300$ |
| November | 20 | 1,100 | $1,100 \times 1 = 1,100$ |
| TOTAL ANIMAL DAYS | | | 31,850 |
| TOTAL SHEEP AUMs..... (31,850 divided by 30)..... | | | 1,062 |
| X \$1.20 per sheep AUM | | | \$1,274.40 |

APPENDIX B

APPENDIX B

| <u>DATES</u> | <u>LIVESTOCK NOS.</u> | <u>PLACES</u> | <u>PAGES IN RECORD</u> |
|---------------------------|--|---|------------------------|
| Jan 1-Mar 23 | 1429 Sheep | Tooele County Lease | 698, 844, 845, 1088 |
| Jan 1-Mar 27 | 700-800 Sheep | Salt Lake City Lease | 698, 844, 845 1095 |
| Jan 1-First Part of April | All cattle | Old Ranch on hay put up summer before | 125, 1126 |
| Jan 1-Mid Mar | 421 Scad Sheep (Included in above 700-800) | Salt Lake City and Swaner leased land | 693, 698, 1208, 1209 |
| Mid Mar-Apr 6 | 379 Yearlings | Church lease | 695 |
| May 15-May 24 | 702 Sheep | ClarkRanch(1/4) Mayflower(1/4) | 697 696 |
| MidApr-LateMay | 200 Sheep | Whitehead(1/2) | 1096 |
| Mar 17-Jun 9 | 224 Cows | Use land (1/4) and pvt land | 703, 704 |
| Apr 1-May 19 | 1125 Sheep | Church Lease | 696 |
| Apr 6-July | 317 Yearlings | Use land (1/4) | 705 |
| May 19-Jul 7 | 1125 Sheep | ClarkRanch(1/4) and Mayflower Lease | 1132, 1145 |
| Jun 9-Oct 13 | 1605 Sheep | Deseret Live-stock lease | 709, 711, 1132 |
| Jul 7-Oct 22 | 1125 Sheep | Six East (1/4) Deseret Livestock Lease | 706, 1149, 1187 |
| Oct13-Nov25,26 | 1605 Sheep | ClarkRanch(1/4) and Mayflower Lease | 1187, 1241 |
| Oct22-Nov25,26 | 1125 Sheep | ClarkRanch(1/4) Mayflower Lease and Wasatch Pasture Lease | 1187, 1241 |
| Aug 6-Nov | 60Cows, 47 Calves, 9 Yearlings | Six East (1/4) | 708 |
| Aug - Sep | 57 Cows, 58 Calves, 1 Steer, 3 Bulls | Wasatch Cty Lease | 1230, 1231 |
| Nov25,26-Dec31 | 2040 Sheep | Tooele Cty Leased Land | 1241 |

APPENDIX C

APPENDIX C

GILLMOR LEASED LANDS

L.D.S. Church - Salt Lake County - 1100 acres
(R-693); Exhibit P-8 and P-9.

Salt Lake City Airport - Salt Lake County -
(R. 563-566)

Dale Hansen - Salt Lake County -
(R. 1209)

Peterson - Salt Lake County -
(R. 1211)

Bettilyon - Salt Lake County - 100 acres -
(R. 1212)

Deseret Livestock Co. - Morgan County - 5,000 acres -
Exhibits P-6, P-7.

Mayflower - Summit County -
Exhibits D-31, D-32, and D-33.

Pasture - Wasatch County -
(R. 1152)

*Swaner Lease - Salt Lake County -
Exhibit P-36.

*Both Bud and Stephen claimed ownership of the Swaner lease, and as noted heretofore, the case of Gillmor v. Swaner and Stephen T. Gillmor, C81-3614, was filed in the year 1981 to determine which lease for 1981 was valid at the time of the alleged trespasses.

APPENDIX D

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF UTAH

FLORENCE J. GILLMOR, STEPHEN T.
GILLMOR, and CHARLES F. GILLMOR,

Plaintiffs and
Respondents,

vs.

EDWARD LESLIE GILLMOR,

Defendant and
Appellant,

(District Court No. C81-3875)

GILLMOR LIVESTOCK CORPORATION,
a Corporation,

Plaintiff and
Appellant,

vs.

STEPHEN T. GILLMOR, FLORENCE J.
GILLMOR, and CHARLES FRANK
GILLMOR,

Defendants and
Respondents.

(District Court No. C82-3490)

Supreme Court No. 19683

RESPONDENTS' MOTION TO CORRECT CLERICAL ERROR

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
E. J. SKEEN
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Attorneys for Appellants

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Salt Lake City, Utah
Telephone: 801 532-1234

Attorneys for Respondent

Plaintiffs and respondents Stephen T. Gillmor, Florence J. Gillmor and Charles Frank Gillmor, pursuant to Rule 60(a) of the Utah Rules of Civil Procedure, move the Court for an order directing the lower court to correct a clerical error appearing in Paragraph No. 8 of the Findings of Fact. (R. 506.)

Paragraph 8 of the Findings of Fact currently reads as follows:

8. As a result of defendants' utilization of lands rightfully in the possession of Stephen Gillmor, Stephen Gillmor suffered a decrease in his lamb production in the Spring of 1981 in the amount of 352 head of lambs with a value of \$23,340.

The number "352" in the foregoing paragraph is a clerical error and paragraph 8 should be corrected to read as follows:

8. As a result of defendants' utilization of lands rightfully in the possession of Stephen Gillmor, Stephen Gillmor suffered a decrease in his lamb production in the Spring of 1981 in the amount of 502 head of lambs with a value of \$23,340.

The grounds for this Motion are as follows:

1. The court below, after a trial to the bench, entered judgment for plaintiffs for damages suffered as a result of trespasses by defendants' livestock in the total amount of \$49,294.04. (R. 470-503.)

2. Included in the damages awarded to plaintiffs were damages for decreased lamb production suffered by plaintiffs as a result of the trespasses.

3. The evidence concerning decreased lamb production was summarized by plaintiffs and presented to the trial court in the form of a table labeled "Exhibit D" which was submitted as part of a brief entitled "Plaintiffs' Trial Brief on the Issue of Damages". (R. 35-45.) The trial brief with the table appended is attached hereto as Exhibit A.

4. The evidence showed, and the trial brief displayed, that in Salt Lake County 150 lambs were lost by Stephen Gillmor with a value of \$7,500, and that 352 lambs were lost in Summit County with a value of \$15,840, for a total loss due to decreased lamb production of \$23,340.

5. The lower court, in its Memorandum Decision, awarded \$23,340 for decreased lamb production, expressly relying on the statement of damages presented by plaintiffs in their trial brief, but referred only to the group of lambs numbering 352 head, neglecting to include the group of lambs numbering 150 head. (R. 62.) A photocopy of the Memorandum Decision is attached hereto as Exhibit B.

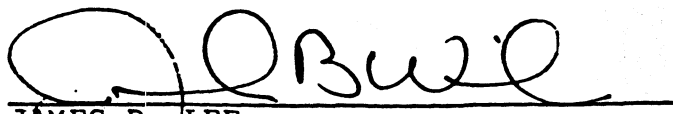
6. The Findings of Fact entered by the lower court reflect the language of the Memorandum Decision and award \$23,340 for decreased lamb production, but refer only to the group of lambs numbering 352 head, (neglecting to include the group of lambs numbering 150 head.) (R. 506.) A photocopy of the Findings of Fact and Conclusions of Law is attached hereto as Exhibit C.

7. The discrepancy between the evidence and the Memorandum Decision and Findings of Fact became apparent to respondents when they reviewed appellants' brief in this matter which at page 22 refers to the discrepancy.

8. In order to conform the Findings of Fact to the evidence, and in order to effectuate the intention of the lower court as demonstrated by its award of damages and its reliance on the statement of damages presented by plaintiffs, paragraph 8 of the Findings of Fact should be corrected to show 502 lambs, rather than 352 lambs. The correction will not change the amount of damages awarded to plaintiffs. *Change!!!*

9. In a recent decision on very similar facts, Stanger v. Sentinel Security Life Insurance Co., 669 P.2d 1201, 1206, 1207 (Utah 1983), this Court ordered the lower court to correct the amount of damages awarded where it was apparent that the jury had attempted to compute damages utilizing the calculations of one of the parties, but had made an error in doing so.

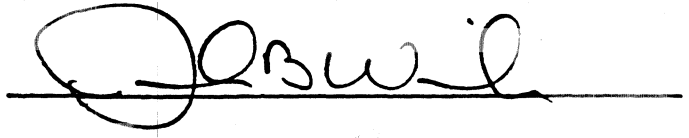
DATED this 23rd day of July, 1984.


JAMES B. LEE
JOHN B. WILSON
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Respondents
185 South State Street, Suite 700
P. O. Box 11898
Salt Lake City, UT 84147
Telephone: (801) 532-1234

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing RESPONDENTS MOTION TO CORRECT CLERICAL ERROR to the following on this 23rd day of July, 1984:

E. J. Skeen
Clifford L. Ashton
VAN COTT, BAGLEY, CORNWALL & McCARTHY
50 South Main Street, Suite 1600
Post Office Box 3400
Salt Lake City, Utah 84110-3400

A handwritten signature, likely of Clifford L. Ashton, is written over a horizontal line. The signature is cursive and stylized, with the first letter being a large capital 'C'.

5192M

SECRET

OCT 21 1983

H. Dixon Hindley, Clerk 3rd Dist. Court
By: Debra D. Rick's
Deputy Clerk

★ ★ ★ ★ ★ ★ ★ ★

Consolidated Cases:
C81-3875
C82-3490

✿ ✿ ✿ ✿ ✿ ✿ ✿ ✿

35

The evidence demonstrates that, despite the partition decision in February, 1981, Bud Gillmor continued to operate the same numbers of livestock historically run on the Gillmor fee and use lands in Salt Lake and Summit counties despite the fact that he had available only one-quarter of the land historically utilized for that purpose. The result was an inevitable overflow of animals on to the surrounding lands leased and used by Stephen Gillmor.

Attached hereto as Exhibit A is plaintiff's calculation of damages for trespass by sheep for the most flagrant period of trespasses from March 24, 1981 to November 24, 1981. Exhibit A indicates that at least 1,125 of defendants' sheep grazed for that eight month period approximately three-quarters of the time on the land leased by Stephen Gillmor, an estimate corroborated by the numerous observations of Stephen and James Gillmor, Ron Robinson and Kent Wilde. The balance of defendants' sheep, conservatively estimated at 1,500, grazed only two months on Gillmor land because they were on leases claimed by defendants for six months. Damages are set forth, then, for the two month period during which the animals grazed on Stephen Gillmor's land approximately 75% of the time. When the numbers of animals and days of trespass are converted to animal unit months, and multiplied by defendants' own lease rates, the recognized measure for valuation of grazing land, the damages

proved by plaintiff for trespass by defendants' sheep are \$10,800.

Attached hereto as Exhibit B is a breakdown of the damages proved by plaintiff for trespass by defendants' cattle following the same approach as outlined above for trespass by sheep. Allowing credit for the time a portion of his animals were on leased land not in the vicinity of the Gillmor property, Stephen Gillmor was damaged by defendants' trespassing cattle in the amount of \$17,504.04.

Attached hereto as Exhibit C is an alternative approach to trespass damages, but based upon the same theory of 75% overstocking and trespass by Bud Gillmor and allowing him credit for the leases he obtained. If the total AUM's operated by Bud Gillmor evaluated at his own lease rates are accumulated, and the value of one-quarter of that total together with the value of his leases are deducted, the dollar value of the remaining grazing equals \$28,808. This figure is virtually identical to the total damages computed in Exhibits A and B.

Plaintiff's damages for loss of lambs caused by Bud Gillmor's trespasses are set forth as Exhibit D, attached hereto. In Exhibit D, the production for mixed groups in Salt Lake County is compared with the unmixed group in Salt Lake County. The exhibit indicates that 150 lambs were lost as a result of the mixing. For Summit County the production is

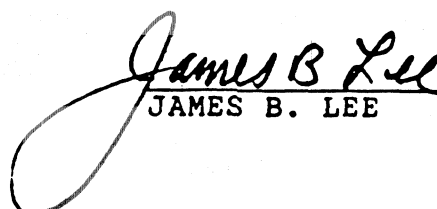
compared with the low Salt Lake County production, indicating that 352 lambs were lost. The value of the lambs lost, as set forth in Exhibit D, is \$23,340.

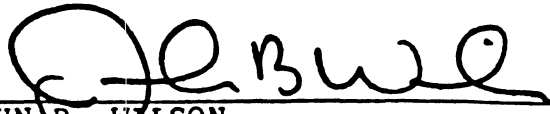
Attached as Exhibit E is the total of all damages claimed by plaintiff for 1981, including the value of hay cut by Bud Gillmor from the 17th North property. The total damages claimed for 1981 is \$51,994.04.

For 1982, the damages as set forth on Exhibit F for trespass incidents are \$627.00. Damages for the value of the Church Lease which Steve Gillmor was entitled to use by virtue of Judge Sawaya's temporary division, but unable to use by reason of Bud Gillmor's occupation, are in the amount of \$1,500. Also on Exhibit E are damages for 1983. Although there were trespass incidents in 1983 they were less numerous and plaintiff does not intend to claim itemized trespass incidents damages for that year. The damages that plaintiff claims for 1983 again are comprised of the values of the Church Lease in the amount of \$1600.00, and the Swaner Lease in the amount of \$844.00.

Plaintiff's total claimed actual damages for the years 1981-1983 are \$56,565.04.

DATED this 20th day of October, 1983.


JAMES B. LEE

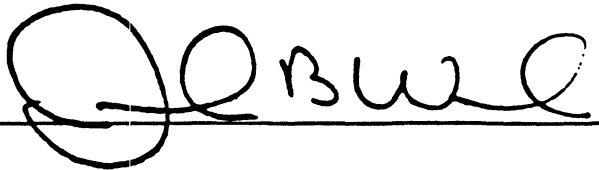


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CERTIFICATE OF SERVICE

Submitted to all parties in open court this 20th
day of October, 1983.



4012M

DAMAGES FROM TRESPASS BY SHEEP

3-24-81 to 11-24-81 8 Months

1125 Sheep on Salt Lake County and
Summit County Gillmor Land:

1125 Sheep - 5 Sheep/A.U.M. x 8 months = 1800 A.U.M.'s

1800 A.U.M.s x 75% = 1350 A.U.M.'s

1350 A.U.M.s x \$6.00* per A.U.M. = \$ 8,100

1500 Sheep divided 6 months on Deseret and Church
leases and 2 months on Gillmor Land:

1500 Sheep - 5 Sheep/A.U.M. x 2 months = 600 A.U.M.'s

600 A.U.M.s x 75% = 450 A.U.M.'s

450 A.U.M.s x \$6.00* per A.U.M. = \$ 2,700

TOTAL

\$10,800

*Based upon defendant's Deseret livestock lease rate.

DAMAGES FROM TRESPASS BY CATTLE

3-17-81 to 2-17-82 10 months

169 cattle on Gillmor Land:

169 Cattle x 10 months = 1690 A.U.M.'s

1690 A.U.M.'s x 75% = 1267 A.U.M.'s

1267 A.U.M.'s x \$7.96* per A.U.M. = \$10,085.32

217 cattle divided 4.27 months on Echo
Lease and 5.73 months on Gillmor Land:

217 cattle x 5.73 months = 1243 A.U.M.'s

1243 A.U.M.'s x 75% = 932 A.U.M.'s

932 A.U.M.'s x \$7.96* per A.U.M. = \$ 7,418.72

TOTAL \$17,504.04

*Based upon defendant's Echo Lease rate.

DAMAGES 1981

Sheep: (2700/5) x 8 months x \$6/A.U.M. = \$25,920

Cattle: 380 x 10 months x \$8/A.U.M. = 30,400

TOTAL 56,320

Less 1/4 of Total -14,000

42,240

Less Leases -13,432

TOTAL \$28,808

Bud's Leases (1981)

Church \$ 1,232

Deseret 5,400

Echo 6,800

\$13,432

LAMB LOSS BASED ON DOCKING COUNTS

SALT LAKE COUNTY 1981 - UNMIXED

5-2-81 377 Ewes - 458 Lambs = 121% Production

Salt Lake County 1981 - Mixed

5-5-81 246 Ewes - 276 Lambs = 112% Production

5-7-81 296 Ewes - 337 Lambs = 114% Production

5-13-81 448 Ewes - 492 Lambs = 110% Production

5-18-81 317 Ewes - 327 Lambs = 103% Production

Total 1307 Ewes - 1432 Lambs = 1307 Ewes x 121% = 1582

Lambs docked 1432

TOTAL LAMBS LOST 150

SUMMIT COUNTY 1981

6-9-81 979 Ewes - 725 Lambs = 74% Production

Lambs Lost in Summit County = 979 Ewes x 110% = 1077

Lambs docked 725

TOTAL LAMBS LOST 352

DOLLAR VALUE OF LAMBS LOST

150 Lambs x \$50.00 = \$ 7,500.00

352 Lambs x \$45.00 = \$15,840.00

Total Loss \$23,340.00

TOTAL DAMAGES 1981

| | | |
|--------------------|--------------------|-----------|
| Hay | \$ 350.00 | |
| Trespass by Sheep | 10,800.00 | |
| Trespass by Cattle | 17,504.04 | |
| Lamb Loss | 23,340.00 | - 15,840. |
| 9 Lost Bucks | <u>?</u> | |
| TOTAL DAMAGES | <u>\$51,994.04</u> | |

Damages 1982

| | |
|--------------|-------------------|
| Church Lease | \$1,500.00 |
| Trespass | <u>627.00</u> |
| TOTAL | <u>\$2,127.00</u> |

Damages 1983

| | |
|--------------|-------------------|
| Church Lease | \$1,600.00 |
| Swaner Lease | <u>844.00</u> |
| TOTAL | <u>\$2,444.00</u> |

FILED IN CLERK'S OFFICE
Salt Lake County Utah
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

OCT 21 1983

H. Dixon Hindley, Clerk of Dist. Court
By D. B. Ricks
Deputy Clerk

FLORENCE GILMORE, et al.,

Plaintiffs,

vs.

EDWARD LESLIE GILMORE, et al.,

Defendants.

MEMORANDUM DECISION

CIVIL NO. C-81-3875

GILMORE LIVESTOCK CORPORATION,
et al.,

Plaintiffs,

vs.

STEVEN T. GILMORE,

Defendant.

CIVIL NO. C-82-3490

The Court having heard the evidence in this matter, received the exhibits, taken judicial notice of the matter of Edward L. Gilmore vs. Robert B. Swaner, et al., case number C-81-3614 filed in this court May 5, 1981, as well as Title 4-25-8, Utah Code Annotated, and having taken judicial notice of the lack of so-called "fencing ordinances" in both Salt Lake and Summit Counties, and having reviewed the recent Utah Supreme Court Decision in the matter of Edward Leslie Gilmore, et ux vs. Florence Gilmore, et al., Number 17588,

filed December 3, 1982 affirming for the most part Judge Leary's Partition Decree is now prepared to rule.

The Court thinks it is pertinent to observe that the long litigious history of the dispute between these parties highlights the ill feelings existing between the various members of this extended family. For the last ten years these parties have been unable to resolve their differences amicably without court interference, culminating in Judge Leary's Partition Decree, the checkerboard pattern of which interspersed with use and owned lands seems to have unfortunately by interrupting the historical grazing routes, added fuel to the fire. However, the Supreme Court has seen fit to affirm the Partition Decree, therefore, the parties and this Court are bound by it.

The Court suspects that nothing it says or does will curb the animosity that exists between these parties. Most regrettably, it appears to the Court that the younger members of these families are being encouraged to carry on the fued so that this fued may well be ongoing even after most of us here have gone to our final reward.

There was evidence of numerous documented instances of trespass testified to involving the livestock of Edward Leslie Gilmore on leasehold lands of Steven T. Gilmore sufficient to

establish by a preponderance that Steven T. Gilmore suffered damages thereby as set forth in Plaintiffs' Trial Brief on the Issue of Damages (as itemized on the visual aid submitted to the Court entitled Damages from Trespass by Sheep) in the amount of \$8,100.00.

In addition, the Court believes that there was sufficient evidence to establish by a preponderance that Steven T. Gilmore was required by virtue of the trespasses referred to to transport a herd of sheep to Park City during the lambing season resulting in a significantly reduced lambing percentage, to wit: 74%. The net effect of this reduction in lambing percentage supports the claim for lambs lost in the amount of 352 head, resulting in damages of \$23,340.00 (set forth in the visual aid submitted to the Court entitled Lamb Loss Based on Docking Counts and Plaintiffs' Trial Brief on the Issue of Damages).

The Court is further of the view that the evidence establishes a loss of hay in the amount of \$350.00 taken from leased lands of Steven T. Gilmore by defendant Edward Leslie Gilmore and/or his agents.

The Court for the reasons specified heretofore is likewise of the view that the evidence has established by a preponderance the losses alleged resultant from trespass by

cattle owned by Edward Leslie Gilmore (as set forth in the visual aid submitted to the Court entitled Damages from Trespass by Cattle and the Plaintiffs' Trial Brief on the Issue of Damages with attachments), in the amount of \$17,504.04.

It is therefore the Court's view that the plaintiff Steven T. Gilmore is entitled to a Judgment against Edward Leslie Gilmore and Gilmore Livestock Corporation due to the common identity of defendants established by the evidence to a preponderance, in the amount of \$49,294.04, with interest as provided in the stipulated Preliminary Injunction and Order from February 18, 1982, plus costs of this action.

As an additional claim, the plaintiffs have sought injunctive relief from this Court. The history of the dispute between these parties makes it abundantly clear that each of the parties should be and therefore is permanently enjoined from in any manner trespassing on the lands of the others which were the subject matter of Judge Leary's Partition Decree of February 14, 1981.

The Court finds that the evidence establishes there was sufficient confusion regarding entitlement to graze the so-called "Deseret" and "Church" lease lands that claimed damages therefrom have not been established for 1981, 1982 or 1983, notwithstanding Judge Sawaya's Order of March 30, 1982.

The Court is not persuaded that there has been sufficient evidence to establish entitlement to punitive damages. A claim for punitive damages requires a showing of injuries resultant from willful and malicious conduct, Powers vs. Taylor, 379 P.2d 380 (1963), or reckless indifference and disregard of the law. Branch vs. Western Petroleum, Inc., 657 P.2d 267 (1982). The Court is of the view that the incidents of trespass were primarily, if not exclusively, the result of misconception by the parties of their rights, as distinguished from reckless indifference and disregard of the law or willful and malicious conduct. This misunderstanding the Court finds, is supported by the testimony reflecting confusion among the parties as to their legal rights and further by certain inaccuracies that were shown even as of the date of the trial on the plat maps used during the course of the trial, Exhibits P-1, 2 and 3.

While there were numerous incidents of trespass by the livestock of both disputants on to the land of the others, the overwhelming weight as to numbers of such trespasses and the constancy thereof were established by the evidence to have been on the part of the defendant Edward Leslie Gilmore. The evidence regarding trespasses of Stephen T. Gilmore's livestock and particularly the damage claimed therefrom was inconclusive. The Court trusts that the significant reduction

GILMORE, ET AL VS.
GILMORE, ET AL

PAGE SIX

MEMORANDUM DECISION

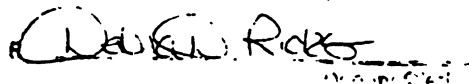
of trespass incidents in the years 1982 and 1983 represents an acknowledgment by Edward Leslie Gilmore and indeed both parties of the need to comply henceforth with Judge Leary's Partition Decree.

Counsel for the plaintiffs is directed to prepare appropriate Findings of Fact, Conclusions of Law and Judgment in accordance herewith, and submit the same to defendants' counsel pursuant to Rule 2.9 of the Rules of Practice in the Third District Court.

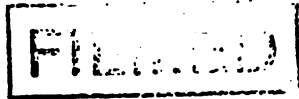
Dated this 21st day of October, 1983.


J. DENNIS FREDERICK
DISTRICT COURT JUDGE

TEST
CLERK
Clerk


Clerk

Copies mailed to: James B. free
10/31/83 John B. Wilson
Clifford D. Ashton
E.J. Skeer



FILED IN CLERK'S OFFICE
Salt Lake County Utah

NOV 7 1983

H. Dixon Hindley, Clerk of Dist. Court
By [Signature] Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

FLORENCE GILLMOR, STEPHEN T.)
GILLMOR, and CHARLES F.)
GILLMOR,)
Plaintiffs,)

vs.)

EDWARD LESLIE GILLMOR and)
GILLMOR LIVESTOCK CORPORATION,)
Defendants.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Consolidated Cases:

C81-3875

C82-3490

* * * * *

These consolidated cases came on regularly for trial before the Court, the Honorable J. Dennis Frederick, District Court Judge, presiding, commencing on October 12, 1983, and concluding on October 20, 1983. Plaintiffs were represented by James B. Lee and John B. Wilson, of and for Parsons, Behle & Latimer. Plaintiff Stephen T. Gillmor was present. Defendants Edward Gillmor and Gillmor Livestock Corporation were present and were represented by Clifford L. Ashton and E.J. Skeen, of

and for VanCott, Bagley, Cornwall & McCarthy. Florence Gillmor and Charles F. Gillmor did not appear and took no active part in the litigation. The Court, having heard the testimony and having examined the exhibits, records, files and papers of the parties; having observed the demeanor and candor of the witnesses; basing its decision on the credible evidence presented to the Court; giving due consideration to all testimony presented by plaintiff Stephen Gillmor with respect to his claim and by defendants with respect to their claims, and the Court being fully advised in the premises, now hereby enters its:

FINDINGS OF FACT

1. From February 14, 1981 to the date of trial, defendant Edward L. Gillmor was the owner in possession of certain lands in Salt Lake and Summit Counties, Utah, which lands were awarded to him by the Judgment and Decree of Partition in Civil No. 223998 dated February 14, 1981, as amended.

2. As of February 14, 1981, and continuing to the date of trial, plaintiff Stephen Gillmor was the lessee of, and rightfully in possession of, certain lands owned by plaintiffs Florence Gillmor and Charles F. Gillmor and leased to Stephen T. Gillmor, which lands were among those awarded to Florence Gillmor and Charles Gillmor by the Judgement and Decree of Partition in Civil No. 223998 dated February 14, 1981, as amended.

3. During the period February 14, 1981 to the date of trial, defendants were rightfully in possession of additional lands in Salt Lake and Summit Counties which they leased from third parties.

4. Stephen Gillmor was rightfully in possession of certain additional lands in Salt Lake and Summit Counties, Utah, which he had leased from third parties or exchanged with third parties.

5. Defendants and Stephen Gillmor utilized the said lands for purposes of raising livestock, with defendants raising sheep and cattle, and Stephen Gillmor raising sheep.

6. Beginning in March, 1981, and continuing thereafter to the date of trial, defendants, their agents and livestock repeatedly and continually came upon and utilized the lands rightfully in the possession of Stephen Gillmor without the permission or consent of plaintiffs.

7. Stephen Gillmor was damaged in 1981 by defendants' sheep grazing on lands in his possession in the amount of \$8,100, and by defendants' cattle grazing on lands in his possession in the amount of \$17,504.04.

8. As a result of defendants' utilization of lands rightfully in the possession of Stephen Gillmor, Stephen Gillmor suffered a decrease in his lamb production in the Spring of 1981 in the amount of 352 head of lambs with a value of \$23,340.

9. Defendants, without the consent or permission of plaintiffs, removed hay from land rightfully in the possession of Stephen Gillmor with a value of \$350.

10. Evidence was presented of trespasses by livestock of Steven Gillmor but the evidence regarding such trespasses and particularly the damage claimed therefrom was inconclusive.

11. The pattern of trespasses described herein is likely to continue in the future unless enjoined by this Court.

12. There was no "fencing ordinance" as that term is used in Utah Code Ann. § 4-25-8 in Salt Lake or Summit Counties from February, 1981 to the date of trial.

13. There is no separation of identities between Edward L. Gillmor and Gillmor Livestock Corporation, and Gillmor Livestock Corporation is the alter ego of Edward L. Gillmor.

From the foregoing Findings of Fact, this Court now makes and enters the following:

CONCLUSIONS OF LAW

1. Defendants' continued and repeated use of lands leased by, and in the rightful possession of, Stephen Gillmor, constitutes trespass for which defendants are liable to Stephen Gillmor in the amount of \$49,294.04.

2. Stephen Gillmor is entitled to interest on the judgment amount of \$49,294.04 at the rate of 12 percent per

annum from February 18, 1982, until the judgment entered herein is satisfied.

3. Defendants are awarded no damages by way of their counterclaim in C81-3875.

4. Defendants' Complaint in C82-3490 is dismissed with prejudice.

5. An injunction is appropriate and may issue restraining both plaintiffs and defendants from entering upon lands divided by the Judgment and Decree of Partition in Civil No. 223998 and in the possession of the other.

DATED this 1 day of Nov., 1983.

BY THE COURT:

ATTEST
H. DIXON HINDLEY
Clerk
By [Signature]
Deputy Clerk

[Signature]
J. DENNIS FREDERICK
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered by hand, a true and correct copy of the foregoing Judgment to the following on this 1st day of November, 1983:

Clifford L. Ashton
E. J. Skeen
VanCott, Bagley, Cornwall & McCarthy
Suite 1600
50 South Main Street
Salt Lake City, Utah 84144

4040M

[Signature]

APPENDIX E

APPENDIX E

LAMB LOSS BASED ON DOCKING COUNTS

SALT LAKE COUNTY 1981 - UNMIXED

5-2-81 377 Ewes - 458 Lambs = 121% Production

Salt Lake County 1981 - Mixed

5-5-81 246 Ewes - 276 Lambs = 112% Production

5-7-81 296 Ewes - 337 Lambs = 114% Production

5-13-81 448 Ewes - 492 Lambs = 110% Production

5-18-81 317 Ewes - 327 Lambs = 103% Production

Total 1307 Ewes - 1432 Lambs = 1307 Ewes x 121% = 1582

Lambs docked 1432

TOTAL LAMBS LOST 150

SUMMIT COUNTY 1981

6-9-81 979 Ewes - 725 Lambs = 74% Production

Lambs Lost in Summit County = 979 Ewes x 110% = 1077

Lambs docked 725

TOTAL LAMBS LOST 352

DOLLAR VALUE OF LAMBS LOST

150 Lambs x \$50.00 = \$ 7,500.00

352 Lambs x \$45.00 = \$15,840.00

Total Loss \$23,340.00

APPENDIX F

APPENDIX F

1 A NOT AT THAT TIME.

2 Q HOW LONG DID THOSE 461 STAY ON THAT LAND?

3 A THOSE WERE OLD EWES, EWE LAMBS. WE HERDED THEM
4 IN THE GENERAL AREA UNTIL LAMBING TIME. THEY CAME ON IN
5 JANUARY AND CONTINUED IN THAT AREA.

6 Q LAMBING TIME WAS WHEN, MR. GILLMOR?

7 A I STARTED THE 8TH OF APRIL IN 1981.

8 Q NOW, WHEN DID YOU BRING OTHER ANIMALS IN TO THESE
9 PROPERTIES IN 1981?

10 A 4TH OF APRIL.

11 Q WHAT DID YOU BRING ONTO THE PROPERTIES ON THE
12 4TH OF APRIL?

13 A I BROUGHT ALL OUR EWES IN AT THAT TIME AND
14 UNLOADED IN THE AREA OF SECTION 15.

15 Q NOW, WHERE IS SECTION 15, FOR THE COURT'S
16 ASSISTANCE?

17 A IT'S WHAT'S CALLED THE UPPER SHED AREA. IT'S
18 THIS CROSSHATCHED AREA (INDICATING). IT'S INDICATED BY
19 THE MARKING "FLOWING WELL" ON THE MAP, AND THIS IS THE
20 AREA WHERE THE OLD CORRAL AND UPPER LAMBING SHED IS THAT
21 WE REFERRED TO. THIS IS WHERE WE BROUGHT THE SHEEP TO.
22 WE CONGREGATED THERE. WE BROUGHT ALL THE EWES IN. WE SET
23 UP A SHEARING CREW, AND WE DID WHAT WE CALL BAG TAGGING,
24 SHEARED AROUND THE RUMP AND AROUND THE UDDER, AND THEN WE
25 CONTINUED TO SEPARATE THOSE SHEEP, DIVIDE THOSE SHEEP. WE

1 TOOK THE YEARLINGS INTO THE EAST AREA, TOOK 500 HEAD INTO
2 OUR SHED LAMBING OPERATION AT 17TH NORTH, AND WE LEFT 2300
3 HEAD HERE ON THE FLAT.

4 Q NOW, THE 2300 HEAD YOU ARE REFERRING TO ARE THE
5 EWES THAT WERE PREPARING TO LAMB?

6 A THAT'S RIGHT. THOSE WERE THE DROPPER EWES, THE
7 PREGNANT EWES THAT WE LEFT THERE TO LAMB.

8 Q NOW, THE CROSSHATCHED AREA TO WHICH YOU REFERRED
9 IN SECTION 15 ON EXHIBIT P-1, DID YOU HAVE THAT LAND LEASE?

10 A THIS IS AN EXCHANGE OF USE WITH A FELLOW -- I
11 CAN'T -- F. C. STANGL.

12 MR. ASHTON: EXCUSE ME. I'M LOSING YOU, MY
13 FRIEND. PUT ME WITH YOU.

14 MR. LEE: IT'S RIGHT HERE (INDICATING), THE
15 CROSSHATCHED AREA ON SECTION 15 ON EXHIBIT P-1.

16 Q (BY MR. LEE) IS THAT A WRITTEN EXCHANGE OR ORAL
17 EXCHANGE?

18 A ORAL EXCHANGE.

19 Q YOU RECEIVED THAT LAND, AND MR. STANGL GETS SOME
20 OTHER LAND TO USE?

21 A HE COMES OUT AND DUCK HUNTS WITH MY SON IN THE
22 AREA OF THE AUERBACH NUM. IN THAT AREA JUST TO THE SOUTH
23 OF THE CROSSHATCHED AREA WHERE WE CAN SEE IN BLUE, AND HE'S
24 AN AVID DUCK HUNTER AND HAS HUNTED SINCE THAT TIME.

25 Q ARE YOU REFERRING TO THIS AREA IN BLUE

1 (INDICATING)?

2 A THAT WHICH IS ON THE NORTH SIDE OF THE GOGGIN
3 DRAIN IN THE BLUE.

4 Q THAT WOULD BE FOUND IN SECTION 22 ON EXHIBIT P-1;
5 IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AFTER YOU MADE THOSE MOVES YOU HAVE TALKED ABOUT
8 IN THE EARLY PART OF APRIL, CAN YOU DESCRIBE THE LAMBING
9 OPERATION FOR US? YOU HAD 2300 EWES, AND WHAT HAPPENED
10 WITH THOSE EWES?

11 A WELL, WE OPERATE A DROP LAMBING OPERATION, PUT
12 THEM IN AN AREA. THEY HAVE THEIR LAMBS. WE SEPARATE THE
13 DROPPER AREA FROM THE EWES AND LAMBS, MOVE INTO ANOTHER
14 AREA AND CONTINUE THAT SAME TYPE OF AN OPERATION FROM DAY
15 TO DAY OR FROM A PERIOD TO A PERIOD, AND WE PUT THE NEWBORN
16 LAMBS IN AN AREA, MOVE THE PREGNANT EWES ONTO AN AREA, AND
17 CONTINUE THAT TYPE OF AN OPERATION.

18 Q NOW, WITH REGARD TO THE AREAS WHICH YOU WERE
19 DOING THE LAMBING, CAN YOU GO TO EXHIBIT P-1 AND DESCRIBE
20 FOR THE COURT WHERE THAT LAMBING TOOK PLACE?

21 A IN THE 7TH NORTH AREA IN THE AREAS YELLOW MARKED
22 IN SECTION 25 AND 26, IN THE AREAS, THE PART OF WHITEHEAD'S
23 WHICH HAS BEEN DESCRIBED, THAT PART OF FRANK'S THAT'S IN
24 WHITEHEAD'S, THIS YELLOW-MARKED AREA THAT'S MARKED HERE
25 (INDICATING), OVER WHAT WE CALL IN THE AUERBACH FIELD IN

1 THE EAST PART IN SECTION 15 AND EAST FROM THERE UP TO THE
2 WELL AND ALSO WEST OF THE SHED IN THIS AREA (INDICATING)
3 IN SECTION 16. THEN LATER ON, WE MOVED ONTO A SECTION 17,
4 WHICH IS REFERRED TO IN THE HINCKLEY EXCHANGE, WHICH IS
5 WEST OF THE CHURCH PROPERTY, AND LATER ONTO THE AREA IN
6 SECTION 18 WEST OF THE FENCE WHICH WAS MARKED BY BUD IN
7 THE EARLY TESTIMONY. THOSE WERE THE AREAS THAT WE LAMBED
8 ON.

9 Q NOW, AFTER THE LAMBING TOOK PLACE, WHERE WERE THE
10 LAMBS LOCATED, IN THOSE SAME AREAS WHERE THE LAMBING TOOK
11 PLACE, OR WERE THEY MOVED TO OTHER AREAS?

12 A WELL, IN A DROP-LAMB OPERATION, YOU ARE
13 CONTINUALLY MOVING THE DROPPERS, LEAVING THE EWES AND
14 LAMBS BACK. WE GRADUALLY BUNCHED THE LITTLE BUNCH OF EWES
15 AND LAMBS INTO LARGER BUNCHES CALLED DOCKING BUNCHES.
16 AFTER WE HAVE DOCKED THOSE LAMBS, THEN WE MOVED THEM ON.

17 Q NOW, WERE THERE ANY OF YOUR ANIMALS THAT YOU WERE
18 NOT ABLE TO LAMB IN THAT AREA, MR. GILLMOR?

19 A YES, THERE WERE.

20 Q HOW MANY NUMBER OF EWES WERE YOU NOT ABLE TO LAMB
21 IN THAT AREA?

22 A THE HERD OF EWES THAT I MENTIONED EARLIER THAT
23 WE PURCHASED THAT WERE IN RUSH VALLEY, I DID NOT BRING INTO
24 THIS AREA TO LAMB.

25 Q IS THERE ANY REASON WHY YOU DIDN'T BRING THEM INTO

1 THIS AREA?

2 A WELL, THESE EWES WERE TO LAMB IN THE FIRST OF
3 MAY, AND MY INTENTION WAS TO LAMB THEM ON THE EAST SIDE,
4 THE RANCH AREA, CROSSHATCHED SWANER AREA IN THE AREAS IN
5 YELLOW AND LAMB IN THAT AREA, IN THE RANCH AREA EAST OF
6 THE BLACK SLUE.

7 Q WHY WEREN'T YOU ABLE TO DO THAT?

8 A THE LAND WAS COMPLETELY OCCUPIED BY CATTLE AND
9 DRY SHEEP AND HORSES BELONGING TO BUD.

10 Q NOW, YOU ARE TALKING ABOUT THE AREA NORTH OF THE
11 OLD RANCH ON EXHIBIT P-1 AND THE YELLOW AND CROSSHATCHED
12 YELLOW AREAS; IS THAT CORRECT?

13 A THAT'S TRUE.

14 Q WHAT DID YOU DO WITH THOSE SHEEP?

15 A I HAD NO CHOICE. I TOOK THEM TO THE PARK CITY
16 AREA REFERRED TO EARLIER IN THE TESTIMONY AS THE QUARRY
17 PROPERTY, TURNED THEM LOOSE ON THE QUARRY PROPERTY, AND
18 THAT'S WHERE THEY LAMBED.

19 Q NOW, HOW MANY SHEEP DID YOU SAY THERE WERE IN
20 THAT GROUP, MR. GILLMOR?

21 A THE PURCHASE WAS 980. WHEN THEY WENT UP THERE,
22 IT WAS UNDER 970.

23 Q NOW, MR. GILLMOR, DID YOU KEEP A RECORD OF THE
24 PRODUCTION WHICH YOU RECEIVED FROM YOUR LAMBING OPERATIONS
25 IN 1981?

1 A YES, I DID.

2 Q LET'S TAKE THOSE BY THE DATES WHEN THEY LAMBED,
3 AND THE NUMBER OF EWES THAT LAMBED, AND THE NUMBER OF LAMBS
4 THAT WERE PRODUCED.

5 A I BEGAN MY DOCKING OPERATION ON THE 2ND OF MAY.
6 THE FIRST LOT OF EWES THAT I DOCKED, THE NUMBER WAS 377.
7 THE LAMBS THAT I DOCKED ON THOSE EWES WAS 458. THE
8 PERCENTAGE WAS 121 PERCENT.

9 Q EXCUSE ME JUST A MINUTE, MR. GILLMOR. DID YOU
10 HAVE ANY TROUBLE WITH RESPECT TO MIXING BETWEEN YOUR HERDS
11 AND THE HERDS OF BUD GILLMOR WITH RESPECT TO THESE ANIMALS
12 THAT YOU HAVE JUST TESTIFIED ABOUT?

13 A NO. THIS FIRST BUNCH WAS BASICALLY LAMBED IN
14 THE AREAS EAST OF 15, EAST OF THE UPPER SHED, THE CROSS-
15 HATCHED AREA REFERRED TO AS THE UPPER LAMBING SHED AND THE
16 WHITEHEAD AREA, AND WE HAD MINOR PROBLEMS IN THAT AREA WITH
17 MIXING.

18 Q NOW, WHAT'S THE NEXT DAY THAT YOU HAD LAMBING?

19 A THE 5TH OF MAY.

20 Q HOW MANY EWES AND HOW MANY LAMBS?

21 A TWO HUNDRED FORTY-SIX EWES, TWO HUNDRED FORTY-SIX
22 LAMBS. THE PERCENTAGE WAS A HUNDRED TWELVE.

23 Q THE NEXT DAY?

24 A TWO HUNDRED NINETY-SIX EWES, THREE HUNDRED THIRTY-
25 SEVEN LAMBS, A HUNDRED FOURTEEN PERCENT.

1 Q THAT WAS ON MAY 7TH; WAS IT NOT?
2 A MAY 7TH.
3 Q WHAT WAS THE NEXT DATE?
4 A THE 18TH OF MAY, 317 EWES, 327 LAMBS, 103 PERCENT.
5 Q NOW, GO BACK TO THE 13TH OF MAY. DIDN'T YOU HAVE
6 SOME EWES LAMB ON THE 13TH?
7 A YES. I HAVE THEM CHANGED IN MY RECORDS. ON THE
8 13TH OF MAY, 448 EWES, 492 LAMBS, AND THAT WAS 110 PERCENT.
9 Q NOW, DO YOU HAVE FIGURES FOR YOUR SUMMIT COUNTY
10 EWES?
11 A YES, I DO.
12 Q CAN YOU TELL US WHAT THEY WERE?
13 A I GOT 979 EWES, 725 LAMBS.
14 Q AND YOUR PRODUCTION?
15 A 74 PERCENT.
16 Q NOW, GOING BACK TO THE ANIMALS -- I THINK I WANT
17 TO GO BACK FURTHER THAN THAT.. LET'S GO BACK TO WHEN YOU
18 FIRST STARTED TO HAVE DIFFICULTY IN 1981 WITH OBSERVATIONS
19 INVOLVING THE SHEEP OF BUD GILLMOR, IF YOU WILL. WHEN IS
20 THE FIRST TIME YOU OBSERVED ANY OF BUD GILLMOR'S ANIMALS
21 ON YOUR LAND, ON THE LAND YOU LEASED?
22 A ON THE 1ST OF APRIL, 1981.
23 Q WHAT DID YOU OBSERVE ON THAT DATE?
24 A I OBSERVED EWES BELONGING TO BUD IN THE AREAS OF
25 SECTION 16, SECTION 17, AND SECTION 18 THROUGH THE GATE ON

1 PROFFER AN OBJECTION WOULD BE MORE PROPERLY SET FORTH, I
2 THINK, IN CROSS-EXAMINATION OF THE WITNESS. IT GOES TO
3 THE WEIGHT OF THE TESTIMONY.

4 PROCEED.

5 Q (BY MR. LEE) DID YOU MAKE A CALCULATION AS TO
6 THE PRODUCTION YOU HAD WITH RESPECT TO THOSE FOUR FLOCKS,
7 MR. GILLMOR?

8 A YES, I DID.

9 Q WHAT WAS THAT PRODUCTION?

10 A THE AVERAGE PRODUCTION OF THE FOUR FLOCKS WAS
11 110 PERCENT.

12 Q DID YOU MAKE A CALCULATION WITH RESPECT TO THE
13 NUMBER OF LAMBS WHICH, IN YOUR OWN OPINION, WERE LOST AS
14 A RESULT OF THE MIXING?

15 A YES, I DID.

16 Q WHAT WAS THAT FIGURE?

17 A A HUNDRED FIFTY LAMBS.

18 Q NOW, WITH RESPECT TO THE FLOCK THAT WENT INTO
19 SUMMIT COUNTY, I BELIEVE YOU TESTIFIED AS TO WHAT THE
20 PRODUCTION OF THAT FLOCK WAS; DID YOU YOU NOT?

21 A I DID.

22 Q 74 PERCENT?

23 A 74 PERCENT.

24 Q DID YOU MAKE A CALCULATION WITH RESPECT TO THE
25 LAMBS WHICH WERE LOST IN THAT FLOCK?

1 A YES.

2 MR. ASHTON: I HAVE THE SAME OBJECTION, IF THE

3 COURT PLEASE.

4 THE COURT: VERY WELL, AND THE SAME RULING.

5 Q (BY MR. LEE) GO AHEAD, MR. GILLMOR.

6 A YES, I DID.

7 Q WHAT WAS THE CALCULATION OF LAMBS LOST?

8 A THE CALCULATION BASED ON THE LOW AVERAGE OF THE

9 110 AND NOT INCLUDING THE 121 PERCENT BASE, I CALCULATED

10 THAT WE LOST 352 LAMBS.

11 Q NOW, MR. GILLMOR, WITH RESPECT TO THE LAMBS WHICH

12 YOU LOST AND GIVEN YOUR OPINION IN SALT LAKE COUNTY, DO

13 YOU HAVE AN OPINION BASED ON THE EXPERIENCE YOU'VE HAD

14 IN THE INDUSTRY AND THE NUMBER OF ANIMALS THAT YOU'VE SOLD

15 EVERY YEAR AS TO WHAT THE VALUE OF A LAMB WAS IN MAY OF

16 1981 IN SALT LAKE COUNTY?

17 A WOULD YOU LIKE A TOTAL FIGURE?

18 Q DO YOU HAVE AN OPINION?

19 A YES.

20 Q CAN YOU TELL US WHAT THAT OPINION IS?

21 A YES, I CAN. BASED ON THE \$50 AVERAGE FOR THE

22 HEAVIER LAMBS PRODUCED IN APRIL AND A \$45 AVERAGE BASED ON

23 THE LATTER-BORN LAMBS IN MAY, I CAME UP WITH A TOTAL AMOUNT

24 OF MONEY OF \$23,340.

25 Q SO THE LAMBS IN SALT LAKE COUNTY WERE VALUED AT

1 \$50, AND THE LAMBS LOCATED IN SUMMIT COUNTY WERE VALUED
2 AT \$45; IS THAT CORRECT?

3 A YES, BECAUSE OF THE TIME THEY WERE BORN, BEING
4 OLDER AND OF HEAVIER WEIGHT.

5 Q NOW, LET'S GO TO SUMMIT COUNTY, IF WE CAN. WHEN
6 DID YOU MOVE YOUR SHEEP, THE ONES THAT YOU DID, TO THE
7 PARK CITY AREA?

8 A IN MAY.

9 Q IN MAY OF 1981?

10 A MAY OF 1981.

11 Q HOW MANY SHEEP DID YOU MOVE TO THE PARK CITY AREA?

12 A WE MOVED JUST A LITTLE OVER 2,000 TOTALLY, 2,010.

13 Q CAN YOU TELL THE COURT BY GOING TO THE MAP WHERE
14 THOSE SHEEP WERE LOCATED WHEN YOU UNLOADED THEM AND WHERE
15 THEY WERE PUT FOR GRAZING?

16 A THE QUARRY THAT WE HAVE BEEN DESCRIBING, THE
17 FLOCK THAT HAD BEEN TAKEN UP THERE FOR LAMBING WAS ALREADY
18 IN THIS AREA (INDICATING). THIS AREA IS CALLED THE QUARRY.
19 IT'S DIVIDED BY A HIGHWAY FROM SILVER CREEK JUNCTION GOING
20 TOWARD HEBER CITY. THE OTHER BUNCH WE UNLOADED FROM THE
21 FLAT, AND THEY WERE IN THE PACE AREA, HOMER SPRING AREA ON
22 THE EAST SIDE OF THE ROAD, THIS SAME ROAD (INDICATING). SO
23 THIS AREA TO THE RIGHT-HAND SIDE OR EAST OF THE ROAD
24 (INDICATING), AND THIS AREA TO THE LEFT-HAND SIDE OF THE
25 ROAD CALLED THE QUARRY.

1 Q NOW, WHEN YOU REFER TO THE COURT THE FLOCK THAT
2 HAD BEEN TAKEN UP THERE FOR LAMBING, YOU HAVE INDICATED
3 THEY WERE ALREADY IN THE QUARRY AREA; IS THAT CORRECT?

4 A YES. I TOOK THEM UP, AND THEY WERE ALREADY
5 THERE. SO I ONLY TOOK UP ONE BUNCH TO PARK CITY AND ENDED
6 UP WITH THAT TOTAL NUMBER THERE.

7 Q NOW, MR. GILLMOR, WITH RESPECT TO THE PARK CITY
8 AREA, I HAND YOU WHAT HAS BEEN MARKED AS EXHIBIT P-20, AND
9 ASK YOU IF YOU WOULD IDENTIFY THAT FOR US.

10 A THIS IS A LEASE WITH ABBY WHITNEY OF THE PARK CITY
11 AREA. THIS IS ONE OF THE AREAS OF GROUND THAT WAS FORMERLY
12 OWNED BY THE BAMBERGERS AND LATER HORMAN AND WILKINSON, AND
13 HORMAN AND WILKINSON DEEDED TWO OF THOSE SECTIONS AWAY, ONE
14 TO B.Y.U., AND ONE TO MRS. ABBY WHITNEY, AND KEPT SOME FOR
15 HIMSELF. THIS IS ONE OF THOSE SECTIONS.

16 Q CAN YOU SHOW THE COURT THIS AREA THAT IS COVERED
17 BY EXHIBIT P-20?

18 A IT'S THE CROSSHATCHED AREA. THESE ARE THE OLD
19 BAMBERGER SECTIONS THAT FALL ALONG THE HIGHWAY GOING TOWARDS
20 HEBER (INDICATING). THEY GO ON BOTH SIDES OF THE HIGHWAY.
21 SOME OF THE ABBY WHITNEY GROUND IS IN THIS AREA CROSSHATCHED
22 IN 33 (INDICATING).

23 MR. LEE: I OFFER PLAINTIFF'S EXHIBIT P-20, YOUR
24 HONOR.

25 MR. ASHTON: NO OBJECTION, YOUR HONOR.